

01 NOV 2005

9



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

John B. Conklin
LEYDIG, VOIT & MAYER, LTD.
Two Prudential Plaza, Suite 4900
180 North Stetson Avenue
Chicago, IL 60601-6780

In re Application of
BELLEZZA, Massimo
U.S. Application No.: 10/500,095
PCT No.: PCT/IT02/00821
Int. Filing Date: 23 December 2002
Priority Date: 27 December 2001
Attorney Docket No.: 229618
For: INTEGRATED CONVEYOR SYSTEM
FOR MOVING LOADS, IN
PARTICULAR VEHICLES ALONG A
PRODUCTION LINE

DECISION

This is a decision on the documents filed via facsimile on 26 October 2005 which are treated as a petition to withdraw the holding of abandonment. No fee is required.

BACKGROUND

On 01 October 2004, a Notification of Missing Requirements Under 35 U.S.C. 371 in the United States Designated/Elected Office (DO/EO/US) (Form PCT/DO/EO/905) was mailed indicating that an oath or declaration in compliance with 37 CFR 1.497(a) and (b) and a surcharge fee was required. Applicants were given two months to respond.

On 30 November 2004, applicant purportedly filed a response which was accompanied by, *inter alia*, a declaration. These papers were not located in the file.

On 01 August 2005, a status inquiry request was filed.

On 25 August 2005, a response to the status inquiry was mailed indicating that a response to the Form PCT/DO/EO/905 mailed 01 October 2004 was not in the file, therefore, the above-captioned application was abandoned.

On 02 September 2005, applicant purportedly filed papers which included the subject petition. This petition is not located in the file.

On 21 October 2005, a Notification of Abandonment (Form PCT/DO/EO/909) was mailed for failing to respond to the Form PCT/DO/EO/905 mailed 01 October 2004

within the time period set therein.

On 26 October 2005, applicant resubmitted the subject petition along with a copy of the date-stamped postcard receipts for the 30 November 2004 response and the 02 September 2005 petition.

DISCUSSION

The response to the Form PCT/DO/EO/905 mailed 01 October 2004 purportedly filed 30 November 2004 was not located in the file. In addition, the petition submitted 02 September 2005 also could not be located.

Nevertheless, MPEP § 503 lists procedures to ensure receipt of any paper filed in the USPTO. Applicant must enclose a self-addressed postcard identifying all of the papers filed. The USPTO will stamp the receipt date on the card and place it on the outgoing mail. The identifying data on the card must clearly identify the paper for which receipt is requested. A postcard receipt which itemizes and properly identifies the papers which are being filed serves as *prima facie* evidence of receipt in the USPTO of all the items listed thereon on the date stamped thereon by the USPTO.

Here, applicant provided a copy of the date-stamped postcard receipt for documents submitted on 30 November 2004 and 02 September 2005. Both postcard receipts identified the application by the application number, docket number and title. On the papers purportedly filed 30 November 2004, the postcard receipt indicates that a "Response to Notice to File Missing Parts Transmittal" and "Executed Declaration" were received in the USPTO. The postcard receipt is stamped "DT03 Rec'd PCT/PTO 30 NOV 2004" across its face. The second postcard receipt also indicates that the subject petition was initially filed 02 September 2005 and is stamped "JC07 Rec'd PCT/PTO 02 SEP 2005" across its face. Moreover, USPTO financial records also show that a \$65.00 surcharge fee was received on 02 September 2005.

Accordingly, applicant has provided *prima facie* evidence that a response to the Form PCT/DO/EO/905 mailed 01 October 2004 was filed 30 November 2004 and that the subject petition was initially filed 02 September 2005.

With regards to applicant's request for a refund of the \$400.00 petition fee, there is no record that such a fee was charged in this case. Hence, no refund is possible.

CONCLUSION

In view of the above, applicant's petition to withdraw the holding of abandonment is hereby **GRANTED**.

The Form PCT/DO/EO/909 mailed 21 October 2005 is VACATED.

The declaration initially filed 30 November 2004 is in compliance with 37 CFR 1.497(a) and (b).

Applicant has completed the requirements for acceptance under 35 U.S.C. 371(c). The application has an international filing date of 23 December 2002, under 35 U.S.C. 363 and a 35 U.S.C. 371(c)(1), (c)(2) and (c)(4) date of 30 November 2004.

This application is being forwarded to the National Stage Processing Division of the Office of PCT Operations for continued processing.



James Thomson
Attorney Advisor
Office of PCT Legal Administration

Tel.: (571) 272-3302